

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
DIABETES AMERICA, INC.,	§	CASE NO. 10-41521
	§	(Chapter 11)
Debtor.	§	Judge Isgur

**EMERGENCY MOTION TO EXTEND EXCLUSIVE PERIOD
IN WHICH TO OBTAIN ACCEPTANCE OF A PLAN
AND CONTINUE CONFIRMATION HEARING**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THE DEBTOR HAS REQUESTED EMERGENCY CONSIDERATION OF THIS MOTION. SPECIFICALLY, THE DEBTOR REQUESTS THAT THE MOTION BE CONSIDERED ON OCTOBER 14, 2011 AT 1:30 P.M.

**To the Honorable Marvin Isgur,
Chief United States Bankruptcy Judge:**

Diabetes America, Inc. (the "Debtor") files this Emergency Motion to Extend Exclusive Period in which to Obtain Acceptance of a Plan and Continue Confirmation Hearing.

Summary of the Motion

1. On October 11, 2011, EDG Partners Fund II, L.P. ("EDG"), the proposed purchaser under the Debtor's chapter 11 plan (the "Plan"), notified the Debtor of a proposed purchase-price adjustment and certain due diligence issues that might affect the proposed closing

date under the EDG Asset Purchase Agreement. The Debtor is in the process of assessing the proposed purchase-price adjustment and addressing the due diligence issues raised by EDG. In light of the foregoing, the Debtor seeks a 45-day extension of the exclusive period within which the Debtor may obtain acceptance of a plan under § 1121(d) of the Bankruptcy Code. The Debtor also seeks a continuance of the October 14, 2011 confirmation hearing to the week of November 14, 2011.

Request for Emergency Consideration

2. The Debtor seeks emergency consideration of this motion. The Debtor only received notice of EDG's proposed purchase price adjustment and the due diligence issues possibly impairing confirmation of the Plan on October 11, 2011. The Debtor is diligently reviewing EDG's proposal and the Debtor's obligations under the Plan. The Debtor anticipates making a counter-proposal in the coming days. The Debtor is also working expeditiously to address the additional due diligence issues raised by EDG. Under the circumstances, the Debtor believes emergency consideration of the requested relief is warranted. The Debtor does not believe that emergency consideration will prejudice any party's rights and protects the *status quo*.

Background

3. On December 21, 2010, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to manage its assets as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case. A committee of unsecured creditors was appointed January 31, 2011 [Docket No. 90].

4. On April 15, 2011, the Court entered an order extending the Debtor's exclusive period to file a plan to August 19, 2011 and their exclusive period to confirm a plan to October 19, 2011 [Docket No. 169].

5. On August 18, 2011, the Court entered its order approving sale procedure, form of asset purchase agreement, form of notice, and bid protections. Attached to the order is a copy of the Asset Purchase Agreement dated August 17, 2011 entered into between the Debtor and EDG (the "APA").

6. On September 2, 2011, the Court approved the Debtor's disclosure statement in support of the Plan and set a confirmation hearing for October 5, 2011 at 10:00 a.m. [Docket No. 302]. The confirmation hearing was subsequently continued to October 14, 2011 at 1:30 p.m.

7. On October 11, 2011, EDG Partners Fund II, L.P. ("EDG"), the proposed purchaser under the Debtor's chapter 11 plan (the "Plan"), notified the Debtor of a proposed purchase-price adjustment and certain due diligence issues that might affect the proposed closing date under the EDG Asset Purchase Agreement.

Relief Requested

8. The Debtor requests a 45-day extension of the period to obtain acceptances of a plan through December 2, 2011.

9. Pursuant to § 1121(d) of the Bankruptcy Code, the Court may extend the exclusivity for cause. While the Code does not define "cause," courts have referred to the cause standard set forth in § 1121(d) as a general standard that allows the Bankruptcy Court "maximum flexibility to suit various types of reorganization proceedings." *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989) (citing *In re Public Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988); *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996)).

10. On the eve of confirmation of the Plan, the Debtor received notice of EDG's proposed purchase price adjustment and certain due diligence issues possibly impairing confirmation of the Plan. The Debtor is diligently reviewing EDG's proposal and the Debtor's obligations under the Plan. The Debtor anticipates making a counter-proposal in the coming days. The Debtor is also working expeditiously to address the additional due diligence issues raised by EDG. Under the circumstances, the Debtor believes a 45-day extension of exclusivity and a continuance of the confirmation hearing to the week of November 14, 2011 is warranted. Also, the Official Committee of Unsecured Creditors supports the requested relief. In light of the foregoing, the Debtor believes that cause exists to grant the requested relief.

11. Accordingly, the Debtor requests that the Court (i) grant the Debtor a 45-day extension of its exclusive period to obtain acceptances of a plan through and including December 2, 2011; (ii) continue the confirmation hearing to the week of November 14, 2011; and (iii) grant the Debtor other just relief.

Dated: October 12, 2011.

Respectfully submitted,

Porter Hedges LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly served by United States first class mail to all parties listed on the attached Service List and by electronic transmission to all registered ECF users appearing in the case on October 12, 2011.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl

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